

AMENDED IN SENATE JUNE 18, 2009

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY APRIL 20, 2009

AMENDED IN ASSEMBLY MARCH 27, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 938

**Introduced by Committee on Judiciary (Feuer (Chair), Brownley,
Evans, Jones, Krekorian, Lieu, and Monning)**

February 26, 2009

An act to amend Section 309 of the Welfare and Institutions Code, relating to dependent children.

LEGISLATIVE COUNSEL'S DIGEST

AB 938, as amended, Committee on Judiciary. Dependent children: relative caregivers and foster parents.

(1) Existing law authorizes a social worker to take a child who is at risk of abuse or neglect into temporary custody under specified circumstances. Existing law requires the social worker to investigate the circumstances of the child and the facts surrounding the taking of the child into custody. Existing law requires that the social worker immediately release the child to the custody of the child's parent or guardian, or other responsible relative, except under certain conditions. If the child is not released to the custody of his or her parent or guardian, the child is deemed to be detained, and a detention hearing must be conducted before the expiration of the next judicial day after a petition to declare the minor a dependent child of the juvenile court has been filed.

This bill would require a social worker, when a child is removed from the home, to ~~begin conducting~~ *conduct*, within 30 days, an investigation, as specified, in order to identify and locate all grandparents, adult siblings, and other adult relatives of the child, in order to provide, except when that relative's history of family or domestic violence makes notification inappropriate, those persons with specified information, including that the child has been removed from the custody of his or her parents or guardians and an explanation of various options to participate in the care and placement of the child, as specified, and to report to the court at the initial petition hearing regarding that effort. The bill would require the State Department of Social Services to develop the notice providing that information to relatives before January 1, 2011.

The bill would also require the Judicial Council to develop a relative information form, as specified. The form would provide information regarding the needs of the child, and would include a provision whereby the relative may request the permission of the court to address the court. The bill would require a social worker to provide that form, on and after January 1, 2011, to the adult relatives identified pursuant to the provision described above. By imposing new duties on social workers, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 309 of the Welfare and Institutions Code
- 2 is amended to read:
- 3 309. (a) Upon delivery to the social worker of a child who has
- 4 been taken into temporary custody under this article, the social
- 5 worker shall immediately investigate the circumstances of the child
- 6 and the facts surrounding the child's being taken into custody and
- 7 attempt to maintain the child with the child's family through the

1 provision of services. The social worker shall immediately release
2 the child to the custody of the child's parent, guardian, or
3 responsible relative unless one or more of the following conditions
4 exist:

5 (1) The child has no parent, guardian, or responsible relative;
6 or the child's parent, guardian, or responsible relative is not willing
7 to provide care for the child.

8 (2) Continued detention of the child is a matter of immediate
9 and urgent necessity for the protection of the child and there are
10 no reasonable means by which the child can be protected in his or
11 her home or the home of a responsible relative.

12 (3) There is substantial evidence that a parent, guardian, or
13 custodian of the child is likely to flee the jurisdiction of the court.

14 (4) The child has left a placement in which he or she was placed
15 by the juvenile court.

16 (5) The parent or other person having lawful custody of the
17 child voluntarily surrendered physical custody of the child pursuant
18 to Section 1255.7 of the Health and Safety Code and did not
19 reclaim the child within the 14-day period specified in subdivision
20 (e) of that section.

21 (b) In any case in which there is reasonable cause for believing
22 that a child who is under the care of a physician and surgeon or a
23 hospital, clinic, or other medical facility and cannot be immediately
24 moved and is a person described in Section 300, the child shall be
25 deemed to have been taken into temporary custody and delivered
26 to the social worker for the purposes of this chapter while the child
27 is at the office of the physician and surgeon or the medical facility.

28 (c) If the child is not released to his or her parent or guardian,
29 the child shall be deemed detained for purposes of this chapter.

30 (d) (1) If an able and willing relative, as defined in Section 319,
31 or an able and willing nonrelative extended family member, as
32 defined in Section 362.7, is available and requests temporary
33 placement of the child pending the detention hearing, the county
34 welfare department shall initiate an assessment of the relative's or
35 nonrelative extended family member's suitability, which shall
36 include an in-home inspection to assess the safety of the home and
37 the ability of the relative or nonrelative extended family member
38 to care for the child's needs, and a consideration of the results of
39 a criminal records check conducted pursuant to subdivision (a) of
40 Section 16504.5 and a check of allegations of prior child abuse or

1 neglect concerning the relative or nonrelative extended family
2 member and other adults in the home. Upon completion of this
3 assessment, the child may be placed in the assessed home. For
4 purposes of this paragraph, and except for the criminal records
5 check conducted pursuant to subdivision (a) of Section 16504.5,
6 the standards used to determine suitability shall be the same
7 standards set forth in the regulations for the licensing of foster
8 family homes.

9 (2) Immediately following the placement of a child in the home
10 of a relative or a nonrelative extended family member, the county
11 welfare department shall evaluate and approve or deny the home
12 for purposes of AFDC-FC eligibility pursuant to Section 11402.
13 The standards used to evaluate and grant or deny approval of the
14 home of the relative and of the home of a nonrelative extended
15 family member, as described in Section 362.7, shall be the same
16 standards set forth in regulations for the licensing of foster family
17 homes which prescribe standards of safety and sanitation for the
18 physical plant and standards for basic personal care, supervision,
19 and services provided by the caregiver.

20 (3) To the extent allowed by federal law, as a condition of
21 receiving funding under Title IV-E of the federal Social Security
22 Act (42 U.S.C. Sec. 670 et seq.), if a relative or nonrelative
23 extended family member meets all other conditions for approval,
24 except for the receipt of the Federal Bureau of Investigation's
25 criminal history information for the relative or nonrelative extended
26 family member, and other adults in the home, as indicated, the
27 county welfare department may approve the home and document
28 that approval, if the relative or nonrelative extended family
29 member, and each adult in the home, has signed and submitted a
30 statement that he or she has never been convicted of a crime in the
31 United States, other than a traffic infraction as defined in paragraph
32 (1) of subdivision (a) of Section 42001 of the Vehicle Code. If,
33 after the approval has been granted, the department determines
34 that the relative or nonrelative extended family member or other
35 adult in the home has a criminal record, the approval may be
36 terminated.

37 (4) If the criminal records check indicates that the person has
38 been convicted of a crime for which the Director of Social Services
39 cannot grant an exemption under Section 1522 of the Health and
40 Safety Code, the child shall not be placed in the home. If the

criminal records check indicates that the person has been convicted of a crime for which the Director of Social Services may grant an exemption under Section 1522 of the Health and Safety Code, the child shall not be placed in the home unless a criminal records exemption has been granted by the county based on substantial and convincing evidence to support a reasonable belief that the person with the criminal conviction is of such good character as to justify the placement and not present a risk of harm to the child.

(e) (1) If the child is removed, the social worker shall ~~begin~~ *conducting conduct*, within 30 days, an investigation in order to identify and locate all grandparents, adult siblings, and other adult relatives of the child, as defined in paragraph (2) of subdivision (f) of Section 319. For all adult relatives who are located, except when that relative's history of family or domestic violence makes that notification inappropriate, the social worker shall provide, within 30 days *of removal of the child*, written notification and shall also provide oral notification in person or by ~~phone~~ *telephone*, whenever appropriate, of the following information:

(A) The child has been removed from the custody of his or her parent or parents, or his or her guardians.

(B) An explanation of the various options to participate in the care and placement of the child and support for the child's family, including any options that may be lost by failing to respond. The notice shall provide information about providing care for the child while the family receives reunification services with the goal of returning the child to the parent or guardian, how to become a foster family home or approved nonrelative extended family member as defined in Section 362.7, and additional services and support that are available in out-of-home placements, including child care, and shall include information regarding the Kin-GAP Program (Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9), the CalWORKs program for approved relative caregivers (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9), adoption, and adoption assistance (Chapter 2.1 (commencing with Section 16115) of Part 4 of Division 9), as well as other options for contact with the child, including, but not limited to, visitation. The State Department of Social Services, in consultation with the County Welfare Directors Association and other interested stakeholders, shall develop the notice before January 1, 2011.

1 (2) On and after January 1, 2011, the social worker shall also
2 provide the adult relatives notified pursuant to paragraph (1) with
3 a relative information form to provide information to the social
4 worker and the court regarding the needs of the child. The form
5 shall include a provision whereby the relative may request the
6 permission of the court to address the court, if the relative so
7 chooses. The Judicial Council, in consultation with the State
8 Department of Social Services and the County Welfare Directors
9 Association, shall develop the form.

10 (3) The social worker shall use due diligence in investigating
11 the names and locations of the relatives pursuant to paragraph (1),
12 including, but not limited to, asking the child in an age-appropriate
13 manner about relatives important to the child, consistent with the
14 child's best interest, and obtaining information regarding the
15 location of the child's adult relatives from the California Parent
16 Locator Service, in accordance with federal requirements. Each
17 county welfare department shall create and make public a procedure
18 by which relatives of a child who has been removed from his or
19 her parents or guardians may identify themselves to the department
20 and be provided with the notices required by paragraphs (1) and
21 (2).

22 SEC. 2. If the Commission on State Mandates determines that
23 this act contains costs mandated by the state, reimbursement to
24 local agencies and school districts for those costs shall be made
25 pursuant to Part 7 (commencing with Section 17500) of Division
26 4 of Title 2 of the Government Code.